

**Trans 401.105 Corrective action.** (1) An inspector who believes that changes or corrections are needed to best management practices may, by written order delivered to the prime contractor or by written or verbal order delivered to a utility person, temporarily suspend work until the project engineer is notified and decides all questions at issue. The project engineer ~~or inspector~~ shall, by written notice, inform the prime contractor or ~~responsible~~ utility person whenever an inspection of a project site or selected site reveals the need for changes or corrections to ~~existing erosion control and storm water management measures~~ best management practices. The department shall prescribe an erosion control order form for these purposes, shall publish the form in the construction and materials manual, and shall thereafter use the erosion control order form for all corrective actions ordered on any project directed and supervised by the department. The project engineer shall include the completed inspection report with every erosion control order issued.

(2) Upon receipt of such written notification, which shall indicate the need for an erosion control order form ordering changes or corrections to existing erosion control and storm water management measures best management practices, the prime contractor or responsible person shall implement, or cause to be implemented, the necessary corrective action within 24 hours or ~~as directed~~ within the time specified by the project engineer ~~or inspector~~. The prime contractor ~~or responsible person~~ shall ~~return~~ deliver the written notification erosion control order form to the project engineer ~~or inspector~~ or to the department's authorized representative that issued the order upon completion of the corrective action and ~~indicate thereon~~ shall include on the form a description of the corrective action implemented and the date completed.

(3) The department shall consider the prime contractor or utility person to have satisfactorily completed all matters required in an erosion control order after 16 hours have elapsed after the erosion control order form showing the corrective action is completed is delivered to the project engineer or to the department's authorized representative, or at 12 noon on the day the 16 hours expires, whichever is later, unless within the later of those 2 times the department has inspected and rejected the corrective action implemented. If a discharge occurs after the prime contractor or utility person delivers the erosion control order form under this section but before the later of those 2 times, the prime contractor or utility person shall have an opportunity to demonstrate that the corrective action was completed as required prior to the discharge.

(4) Notwithstanding any time period permitted under this section for completing corrective action, a prime contractor is considered not in compliance with the contract documents, as defined in s. Trans 401.12(1)(a), for any area or matter described in the erosion control order form as requiring changes or corrections until such time as the change or correction is satisfactorily completed, as determined under sub. (3).

(5) Written notices are considered delivered to a prime contractor for purposes of this section when the written notice is presented to the head representative of the prime contractor then available on the project site or selected site, or when written notice is delivered to the prime contractor's principal place of business, whichever occurs earlier. Written notices are considered delivered to a project engineer or to the department when the written notice or form is presented to the project engineer or to the authorized

department representative then available on the project site, or when written notice is delivered to the project engineer's principal place of business, whichever occurs earlier.

**SECTION 68.** Trans 401.10(4)(intro.) is amended to read:

Trans 401.10(4)(intro.) REPORT. ~~All inspections shall be documented by a written~~ The department shall prescribe an inspection report form for documenting the findings of an erosion control inspection for use statewide on all projects directed and supervised by the department other than utility facility projects. The inspector shall document each inspection on the inspection report form. The written inspection report may be included as is considered part of a project diary and. The department shall publish the inspection report form in the construction and materials manual, and the form takes effect upon publication. The inspection report and any form required for use on utility facility projects shall contain all of the following:

**SECTION 69.** Trans 401.10(4)(ag) and (am) are created to read:

Trans 401.10(4)(ag) The names of the inspector, prime contractor or utility person, and erosion control subcontractor.

(am) The project identification number or permit number.

**SECTION 70.** Trans 401.10(4)(b) is amended to read:

Trans 401.10(4)(b) Any comments concerning the effectiveness of in-place ~~erosion control and storm water management measures~~ best management practices.

**SECTION 71.** Trans 401.10(4)(c) is renumbered Trans 401.10(4)(c)2. and amended to read:

Trans 401.10(4)(c)2. Any reasonable corrections needed to restore, maintain or increase the effectiveness of existing ~~erosion control and storm water management~~ measures best management practices.

**SECTION 72.** Trans 401.10(4)(c)1., 3. and 4. are created to read:

Trans 401.10(4)(c)1. A statement of whether each type of best management practice required by the ECIP complies with that plan. The inspection report shall specify the location and deficiency of any best management practices that do not comply with the erosion control plan, the ECIP and any other contract documents, as defined in s. Trans 401.12(1)(a).

3. The prime contractor is not required to make any corrections as a result of an inspection unless an erosion control order is issued under s. Trans 401.105.

4. A utility person shall take any corrective action that is consistent with the permit issued by the department and that is ordered, verbally or in writing, by the department or the department's authorized representative.

**SECTION 73.** Trans 401.10(4)(d) is amended to read:

Trans 401.10(4)(d) Notes—on Written notes commemorating any verbal communications between the project engineer or, inspector and the, contractor or responsible utility person regarding erosion control and storm water management.

**SECTION 74.** Trans 401.10(4m) and (4r) are created to read:

Trans 401.10(4m) REPORT AVAILABLE TO CONTRACTOR. Within 24 hours after completing an inspection, the project engineer or inspector shall post the completed inspection report prepared under sub. (4) on the site to which the report relates.

**SECTION 75.** Trans 401.10(5) and (6) are amended to read:

Trans 401.10(5) REVIEW. The department shall ~~maintain~~ make copies of the written inspection reports ~~which require corrective action on a site~~, either separately or as part of the project diary, available for review by other agencies and the public.

(6) RECORDS. After a project is completed and the final inspection has been made, the department shall maintain copies of the written inspection reports ~~shall be maintained by the department~~ and erosion control orders in the project's files, or with the project's permit application or approval document, if any, for a period of not less than 3 years after the date the department accepted the completed project.

**SECTION 76.** Trans 401.105(1m) is created to read:

Trans 401.105(1m) An authorized representative of the department shall inform the utility person, verbally or in writing, whenever an inspection of the project site by the department reveals the need for changes or corrections to best management practices. A utility person shall comply with any corrective action order, written or verbal, issued by the department's authorized representative. Upon completing the corrective action, the utility person shall notify the appropriate department representative of the corrective action taken and the date completed.

**SECTION 73.** Trans 401.106 and Trans 401.107 are created to read:

**Trans 401.106 Post-construction performance standard. (1) DEFINITIONS.**

In this section:

(a) "Average annual rainfall" means the rainfall determined by the following year and location for the location nearest the project site: Madison, 1981 (Mar. 12-Dec. 2); Green Bay, 1969 (Mar. 29-Nov. 25); Milwaukee, 1969 (Mar. 28-Dec. 6); Minneapolis, 1959 (Mar. 13-Nov. 4); Duluth, 1975 (Mar. 24-Nov. 19).

(b) "TR-55" means the United States Department of Agriculture, Natural Resources Conservation Service (formerly Soil Conservation Service), Urban Hydrology for Small Watersheds, Second Edition, Technical Release 55, June 1986.

NOTE: TR-55 is on file with the offices of the Revisor of Statutes, the Secretary of State, and the Department of Transportation, Office of General Counsel. Copies may be obtained by writing to the U.S. Department of Agriculture, Natural Resources Conservation Service, Conservation Engineering Division, 14<sup>th</sup> and Independence Avenue, SW., Room 6136-S, Washington, DC 20250. The phone number for the division is: 202-720-2520, and the fax number is: 202-720-0428. TR-55 is available electronically at:

<http://www.wcc.nrcs.usda.gov/water/quality/common/tr55/tr55.html>

(1g) DELAYED EFFECTIVE DATE. This section applies only if transportation facility construction activities that are not subject to this chapter are subject to similar regulatory requirements administered by the department of natural resources. Until such time, the department may apply this section wherever the department determines that the application of this section is practicable.

(1m) APPLICABILITY. Subject to sub. (1g), this section applies to a transportation facility that is subject to the modifications of this chapter that took effect on the effective date of this chapter .... [revisor inserts date], but does not apply to any of the following:

(a) A project site that has undergone final stabilization within 2 years after the effective date of this chapter ... [revisor inserts date].

(b) Reconditioning or resurfacing, as defined in s. 84.013(1)(b) and (d), Stats., of a highway.

(c) Minor reconstruction of a highway. In this paragraph, "minor reconstruction" means reconstruction, as defined in s. 84.013(1)(c), Stats., of any length of highway that does not widen the roadbed by more than 100 feet, and for which the total length of relocated highway and any added through travel lane does not exceed 1.50 miles. Two

or more adjoining added through travel lanes shall be counted as one added through travel lane for purposes of determining the length of the added through travel lanes. A relocation of a highway that includes added through travel lanes shall be counted as one unit for purposes of determining the length of the relocation and added through travel lanes. Pavement widening for purposes of adding a passing lane is not an added through travel lane. Notwithstanding the exemption under this paragraph, if minor reconstruction causes a highway to lie within a buffer area, as defined in sub. (6)(a), or increases the area of the roadway that lies within a buffer area, the requirements under sub. (6) apply to that buffer area.

(d) Construction of a transportation facility that replaces an existing transportation facility, or other existing residential, commercial, industrial or institutional land uses, if there is no increase in exposed parking lots or roads.

(e) A transportation facility with less than 10% connected imperviousness based on complete development of the transportation facility, provided the cumulative area of all parking lots and rooftops is less than one acre.

**NOTE: Projects that consist of only the construction of bicycle paths or pedestrian trails generally meet this exception as these facilities have minimal connected imperviousness.**

(f) Construction of a transportation facility that has less than one acre of land disturbing construction activity.

(2) **PLAN.** The department shall develop and implement a written plan that includes the requirements of subs. (3) to (10) for each transportation facility. This plan may be part of the erosion control plan.

(3) **TOTAL SUSPENDED SOLIDS.** Best management practices shall be designed, installed and maintained to control total suspended solids carried in runoff from the transportation facility as follows:

(a) For new transportation facilities, by design, reduce the suspended solids load to the maximum extent practicable, based on an average annual rainfall, as compared to no runoff management controls. A reduction in total suspended solids by at least 80% meets the requirements of this paragraph.

(b) For highway reconstruction and non-highway redevelopment, by design, reduce to the maximum extent practicable the total suspended solids load by at least 40%, based on an average annual rainfall, as compared to no runoff management controls. A 40% or greater total suspended solids reduction shall meet the requirements of this paragraph. In this paragraph, "redevelopment" means the construction of residential, commercial, industrial or institutional land uses and associated roads as a substitute for existing residential, commercial, industrial or institutional land uses.

(c) Notwithstanding pars. (a) and (b), if the design cannot achieve the applicable total suspended solids reduction specified, the design plan shall include a written and site-specific explanation why that level of reduction is not attained and the total suspended solids load shall be reduced to the maximum extent practicable.

(4) **PEAK DISCHARGE.** (a) By design, BMPs shall be employed to maintain or reduce the peak runoff discharge rates, to the maximum extent practicable, as compared to pre-development site conditions for the 2-year 24-hour design storm or to the 2-year design storm with a duration equal to the time of concentration applicable to the transportation facility. Pre-development conditions shall assume "good hydrologic



conditions" for appropriate land covers as identified in TR-55 or an equivalent methodology. The meaning of "hydrologic soil group" and "runoff curve number" are as determined in TR-55. However, when pre-development land cover is cropland, rather than using TR-55 values for cropland, the runoff curve numbers in Table 2 below shall be used.

<b>Table 2 – Maximum Pre-Development Runoff Curve Numbers for Cropland Areas</b>				
<b>Hydrologic Soil Group</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Runoff Curve Number</b>	56	70	79	83

**NOTE:** The curve numbers in Table 2 represent mid-range values for soils under a good hydrologic condition where conservation practices are used and are selected to be protective of the resource waters.

(b) This subsection does not apply to:

1. A transportation facility where the change in hydrology due to development does not increase the existing surface water elevation at any point within the downstream receiving surface water by more than 0.01 of a foot for the 2-year 24-hour storm or for a 2-year design storm with a duration equal to the time of concentration.

**NOTE:** Hydraulic models, such as HEC-2 or an equivalent methodology, may be used to determine the change in surface water elevations.

2. A highway reconstruction site.

(5) INFILTRATION. (a) Except as provided in pars. (d) to (g), BMPs shall be designed, installed and maintained to infiltrate runoff to the maximum extent practicable in accordance with one of the following:

1. Infiltrate sufficient runoff volume so that the post-construction infiltration volume shall be at least 60% of the pre-construction infiltration volume, based on an

average annual rainfall. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

2. Infiltrate 10% of the post-development runoff volume from the 2-year 24-hour design storm with a type II distribution. Separate curve numbers for pervious and impervious surfaces shall be used to calculate runoff volumes and not composite curve numbers as defined in TR-55. However, when designing appropriate infiltration systems to meet this requirement, no more than 2% of the project site is required as an effective infiltration area.

(b) Pre-development condition shall be the same as specified in sub. (4)(a).

(c) Before infiltrating runoff, pretreatment shall be required for parking lot runoff and for runoff from new road construction in commercial, industrial and institutional areas that will enter an infiltration system. The pretreatment shall be designed to protect the infiltration system from clogging prior to scheduled maintenance and to protect groundwater quality in accordance with par. (g). Pretreatment may include, but is not limited to, oil and grease separation, sedimentation, biofiltration, filtration, swales or filter strips.

**NOTE: To minimize potential groundwater impacts it is desirable to infiltrate the cleanest runoff. To achieve this, a design may propose greater infiltration of runoff from low pollutant sources such as roofs, and less from higher pollutant source areas such as parking lots.**

(d) The following are prohibited from meeting the requirements of this subsection, due to the potential for groundwater contamination:

1. Areas associated with tier 1 industrial facilities identified in s. NR 216.21(2)(a), including storage, loading, rooftop and parking.

2. Storage and loading areas of tier 2 industrial facilities identified in s. NR 216.21(2)(b).

**NOTE: Runoff from tier 2 parking and rooftop areas may require pretreatment before infiltration.**

3. Fueling and vehicle maintenance areas.

4. Areas within 1000 feet upgradient or within 100 feet downgradient of karst features.

5. Areas with less than 3 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.

6. Areas with runoff from industrial, commercial and institutional parking lots and roads and residential arterial roads with less than 5 feet separation distance from the bottom of the infiltration system to the elevation of seasonal high groundwater or the top of bedrock.

7. Areas within 400 feet of a community water system well as specified in ch. NR 811 or within 100 feet of a private well as specified in ch. NR 812 for runoff infiltrated from commercial, industrial and institutional land uses or regional devices for residential development.

8. Areas where contaminants of concern, as defined in s. NR 720.03(2), are present in the soil through which infiltration will occur.

9. In this subdivision, "percent fines" means the percentage of a given sample of soil, which passes through a #200 sieve. Any area where the soil does not exhibit any of the following characteristics between the bottom of the infiltration system and seasonal high groundwater and top of bedrock:

a. At least a 3-foot soil layer with 20 percent fines or greater.

b. At least a 5-foot soil layer with 10 percent fines or greater.

c. Where the soil medium within the infiltration system does not provide an equivalent level of protection.

(e) Projects undertaken in the following areas are not required to meet the requirements of this subsection:

1. Areas where the infiltration rate of the soil is less than 0.6 inches/hour measured at the bottom of the infiltration system.

2. Parking areas and access roads less than 5,000 square feet for commercial and industrial development.

3. Areas in which a new project is replacing existing residential, commercial, industrial or institutional land uses or associated roads, or both.

4. Undeveloped areas of less than 5 acres located within existing urban sewer service areas and surrounded by existing, residential, commercial, industrial or institutional land uses.

5. Any area during periods when the soil at that area is frozen.

6. Roads in commercial, industrial and institutional land uses, and arterial residential roads.

7. Highways.

(f) Where alternate uses of runoff are employed, such as for toilet flushing, laundry or irrigation, such alternate use shall be given equal credit toward the infiltration volume required by this subsection.

(g)1. Infiltration systems designed in accordance with this subsection shall, to the extent technically and economically feasible, minimize the level of pollutants infiltrating

to groundwater and shall maintain compliance with the preventive action limit at a point of standards application as determined under ch. NR 140. However, if specific information indicates that compliance with a preventive action limit is not achievable at that location, then the infiltration system may not be installed or shall be modified to prevent infiltration to the maximum extent practicable.

2. Notwithstanding subd.1., the discharge from BMPs shall remain below the enforcement standard at the point of standards application, as determined under ch. NR 140.

(6) BUFFER AREAS. (a) In this subsection, "buffer area" means an area of land that commences at the ordinary high-water mark of lakes, streams and rivers, or at the delineated boundary of wetlands, and that is the greatest of the following applicable widths, as measured horizontally from the ordinary high-water mark or delineated wetland boundary:

1. For outstanding resource waters and exceptional resource waters, and for wetlands in areas of special natural resource interest as specified in s. NR 103.04, 75 feet.

2. For perennial and intermittent streams identified on a United States geological survey 7.5-minute series topographic map, or a county soil survey map, whichever is more current, 50 feet.

3. For lakes, 50 feet.

4. For highly susceptible wetlands, 50 feet. Highly susceptible wetlands include the following types: fens, sedge meadows, bogs, low prairies, conifer swamps, shrub swamps, other forested wetlands, fresh wet meadows, shallow marshes, deep marshes

and seasonally flooded basins. Wetland boundary delineation shall be made in accordance with s. NR 103.08(1m). This paragraph does not apply to wetlands that have been completely filled in accordance with all applicable state and federal regulations. The buffer area for wetlands that have been partially filled in accordance with all applicable state and federal regulations shall be measured from the wetland boundary delineation after fill has been placed.

5. For less susceptible wetlands, 10 percent of the average wetland width, but no less than 10 feet nor more than 30 feet. Less susceptible wetlands include degraded wetlands dominated by invasive species such as reed canary grass.

6. For concentrated flow channels with drainage areas greater than 130 acres, 10 feet.

(ag) In par. (a)1., 4. and 5., determinations of the extent of the buffer area adjacent to wetlands shall be made on the basis of the sensitivity and runoff susceptibility of the wetland in accordance with the standards and criteria in s. NR 103.03.

(am) In this subsection, "buffer area" does not include any area of land adjacent to any stream enclosed within a pipe or culvert, such that runoff cannot enter the enclosure at this location.

(b)1. Beginning with land acquired on or after the effective date of this chapter ... [revisor inserts date] for a transportation facility, no impervious surface that is part of a transportation facility may be constructed within a buffer area, unless the department determines, in consultation with the department of natural resources, that there is no practical alternative. If there is no practical alternative to locating an impervious part of a

transportation facility within a buffer area, the transportation facility may be constructed in the buffer area only to the extent the department, in consultation with the department of natural resources, determines is reasonably necessary, and the department shall state in the erosion control plan or in the plan prepared under sub. (2) why it is necessary to construct the transportation facility within a buffer area.

2. If a transportation facility is constructed within a buffer area, adequate sod or self-sustaining vegetative cover, such as grasses, forbs, sedges and duff layers of leaves and woody debris, of 70% or greater shall be established and maintained in the area that is the width of the buffer area, or the greatest width practical, and throughout the length of the buffer area in which the transportation facility is located. The adequate sod or self-sustaining vegetative cover required under this subdivision shall be sufficient to provide for bank stability, maintenance of fish habitat and filtering of pollutants from upslope overland flow areas under sheet flow conditions. Non-vegetative materials, such as rock riprap, may be employed on the bank as necessary to prevent erosion such as on steep slopes or where high-velocity flows occur.

**NOTE: Vegetative cover may be measured using the line transect method described in the University of Wisconsin-Extension publication number A3533, titled "Estimating Residue Using the Line Transect Method". Seeding of non-aggressive vegetative cover is recommended in the buffer areas. Vegetation that is flood and drought tolerant and that has an extensive root system is preferable.**

3. Best management practices such as filter strips, swales or wet detention basins, that are designed to control pollutants from non-point sources may be located in the buffer area.

4. This subsection does not apply to:

a. Areas in which a new project, other than a highway, is replacing existing residential, commercial, industrial or institutional land uses.

b. Transportation facilities that cross or access surface waters, such as boat landings, bridges and culverts.

c. Transportation facilities from which runoff does not enter the surface water, except to the extent that vegetative ground cover is necessary to maintain bank stability.

(7) FUELING AND VEHICLE MAINTENANCE AREAS. Fueling and vehicle maintenance areas shall, to the maximum extent practicable, have BMPs designed, installed and maintained to reduce petroleum within runoff, such that the runoff that enters waters of the state contains no visible petroleum sheen.

(8) LOCATION AND REGIONAL TREATMENT EXCLUSION. (a) BMPs may be located on a project site, or off a project site as part of a regional storm water device, practice or system.

(b) Runoff within a non-navigable surface water that flows into a BMP, such as a wet detention pond, is not required to meet the performance standards of this section. Permanent BMPs may be located in non-navigable surface waters.

(c) Except as provided in par. (d), post-construction runoff from a newly constructed transportation facility shall meet the requirements of this section before entering a navigable surface water.

(d) Post-construction runoff from any development within a navigable surface water that flows into a BMP is not required to meet the requirements of this section if all of the following apply:



1. The BMP was constructed prior to the effective date of this chapter ... [revisor inserts date] and the BMP either received a permit issued under ch. 30, Stats., or the BMP did not require a ch. 30, Stats., permit.

2. The BMP is designed to treat runoff from upland development that is constructed after the BMP was constructed.

(e) The discharge of runoff from a BMP, such as a wet detention pond, is subject to this chapter.

(9) TIMING. The BMPs required under this section shall be installed before the project site has undergone final stabilization.

(10) SWALE TREATMENT. (a) Except as provided in par. (b), transportation facilities that use swales for runoff conveyance and pollutant removal meet all of the requirements of this section, if the swales are designed to the maximum extent practicable to do all of the following:

1. Be vegetated. However, where appropriate, non-vegetative measures may be employed to prevent erosion or provide for runoff treatment, such as rock riprap stabilization or check dams.

**NOTE:** It is preferred that tall and dense vegetation be maintained within the swale due to its greater effectiveness at enhancing runoff pollutant removal.

2. Carry runoff through a swale for 200 feet or more in length that is designed with a flow velocity no greater than 1.5 feet per second based on a 2-year 24-hour design storm or on a 2-year design storm with a duration equal to the time of concentration. If a swale of 200 feet in length cannot be designed with a flow velocity of 1.5 feet per second or less, the flow velocity shall be reduced to the maximum extent practicable.

**NOTE:** The swale design may include check dams to slow runoff flows and improve pollutant removal. Transportation facilities with continuous features such as curb and gutter, sidewalks or parking lanes do not comply with the design requirements of this subsection. However, a limited amount of structural measures such as curb and gutter may be allowed as necessary to account for other concerns such as human safety or resource protection.

(b) Notwithstanding par. (a), the department shall consult with the department of natural resources' liaison to the department of transportation to determine whether other provisions of this section are necessary to achieve water quality standards. This paragraph applies only to a transportation facility that has an average daily traffic of 2,500 or more, and from which the initial surface water of the state that runoff from the transportation facility directly enters is any of the following:

1. An outstanding resource water.
2. An exceptional resource water.
3. Waters listed in s. 303(d) of the federal Clean Water Act, 33 USC 1344, as amended, that are identified as impaired in whole or in part, due to nonpoint source impacts.
4. Waters for which targeted performance standards are promulgated under s. NR 151.004.

**Trans 401.107 Developed urban area performance standard.** (1) The department shall develop and implement a storm water management plan to control pollutants from transportation facilities that are owned and operated by the department and located within municipalities regulated under subch. I of ch. NR 216. The plan shall do the following to the maximum extent practicable:

- a. Beginning not later than March 10, 2008, implement a storm water management plan that is designed to attain at least a 20% reduction in total suspended

solids in runoff that enters waters of the state as compared to no storm water management controls.

b. Beginning not later than March 10, 2013, implement a storm water management plan that is designed to attain at least a 40% reduction in total suspended solids in runoff that enters waters of the state as compared to no storm water management controls.

(2) The department shall inform and educate appropriate department staff and any transportation facility maintenance authority contracted by the department of transportation to maintain transportation facilities described in sub. (1)(intro.) regarding nutrient, pesticide, salt and other deicing material and vehicle maintenance management activities in order to prevent runoff pollution of waters of the state.

**SECTION 78.** Trans 401.11 is amended to read:

**Trans 401.11 Enforcement.** The project engineer and ~~inspector~~ shall have the authority to enforce the provisions of this chapter, except that for utility facility projects a representative of the department shall enforce this chapter. This authority shall include, ~~but not be limited to,~~ ordering the suspension of work on a project, including work at the project site or at any selected sites, for such the period or periods of time as deemed considered necessary in the interest of public safety or convenience, or for such the period or periods of time as deemed considered necessary due to the failure on the part of a contractor or responsible utility person to comply with any or all of the requirements of this chapter, including the failure of a prime contractor or responsible utility person to implement within the prescribed time period a corrective action ordered in response to an inspection under s. Trans 401.105. An inspector, by written order delivered to the

prime contractor, or by written or verbal order delivered to a utility person, may temporarily suspend work until the project engineer or appropriate department representative is notified and decides all questions at issue.

**SECTION 79.** Trans 401.12 is created to read:

**Trans 401.12 Liability for prohibited discharge.** (1) In this section:

(a) "Contract documents" means the written agreement between the department and the prime contractor that sets forth the obligations of the parties to the contract, including the invitation for bids, proposal, contract form and contract bond, standard specifications, supplemental specifications, interim supplemental specifications, special provisions, addenda, general plans, detailed plans, erosion control plan, ECIP, notice to proceed, permits issued by the department, and any contract change orders and agreements required to complete the construction of the work in an acceptable manner, including authorized extensions and erosion control orders.

(b) "Progress schedule" means the schedule that establishes completion dates for activities required in the contract documents, and interim completion dates, including revisions and updates to that schedule.

(2) Except as provided in sub. (3), activity necessitated by a prohibited discharge from a project or selected site shall be considered a department-directed revision to the contract and the department shall pay all costs associated with the discharge in accordance with contract documents.

(3)(a) The prime contractor shall pay all costs associated with a prohibited discharge from a project site or selected site if any of the following apply:

1. The prime contractor was not in compliance with the contract documents at the time of the prohibited discharge, and the failure to comply was a substantial contributing factor in causing, failing to prevent, or worsening the discharge. An inspection report prepared under s. Trans 401.10 that identifies non-compliance with the ECIP is not considered non-compliance with an ECIP unless an erosion control order is issued under s. Trans 401.105 and the changes or corrections required by the erosion control order have not been satisfactorily completed.

2. The performance under the contract documents has fallen behind the progress schedule and the prime contractor has not submitted to the project engineer a revised progress schedule within 5 days after receiving a written request from the project engineer to revise the progress schedule. This subdivision applies only if the failure to comply with the progress schedule was a substantial contributing factor in causing, failing to prevent, or worsening the discharge.

(b)1. This subsection does not apply to any of the following prohibited discharges:

a. Discharges occurring after the project has been completed and accepted as final in the manner prescribed in the contract documents.

b. Discharges occurring from any portion of work for which the department has granted partial acceptance as provided in the contract documents.

2. This section does not apply to prohibited discharges from a utility facility project.

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(END OF RULE TEXT)

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**Effective Date.** This rule shall take effect on the first day of the month beginning after publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

**Initial Applicability.** This chapter first applies to any of the following:

1. Actions for which a final environmental impact statement is first approved on the effective date of this chapter ... [revisor inserts date].
2. Actions for which a finding of no significant impact is first made under ch. Trans 400 on the effective date of this chapter ... [revisor inserts date].
3. Actions that are documented in an environmental report, as defined in s. Trans 400.04(10), first completed on the effective date of this chapter ... [revisor inserts date] that fit the criteria or conditions for approval as a categorical exclusion in 23 CFR 771.117, April 1, 2000, or has met the review criteria of paragraph 23.a. of chapter 3 of federal aviation administration order 5050.4A issued on October 8, 1985.

Signed at Madison, Wisconsin, this 31<sup>st</sup> day of May, 2002.

  
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THOMAS E. CARLSEN  
Acting Secretary  
Wisconsin Department of Transportation

## Fiscal Estimate — 2001 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number TRANS 401

**Subject**

Revised TRANS 401 rule

**Fiscal Effect**

State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- |  |   |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation        |   |

☒ Increase Costs — May be possible to absorb within agency's budget.

☒ Yes ☐ No

☐ Decrease Costs

Local: ☒ No Local Government Costs

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Increase Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities

☐ Counties ☐ Others

☐ School Districts ☐ WTCS Districts

**Fund Sources Affected**

☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S

**Affected Chapter 20 Appropriations****Assumptions Used in Arriving at Fiscal Estimate**

The fiscal impact estimates made by the department have assumed a highway improvement program level of approximately \$740 million for FY 2003 (projects anticipated in FY 2003 were used to evaluate the impacts of the proposed revisions).

To aid in assessing the impacts of complying with revised TRANS 401 erosion control requirements, WisDOT and other stakeholders, including DNR, compiled a series of erosion control practices and applicability conditions that will meet the standards in the revised rule. These practices were organized in a matrix and then compared to existing practices at the department. Because of the similarity of the current erosion control practices and those in the matrix, it is believed minor changes will be needed for erosion control. For projects which cannot install or apply erosion control practices in conformance with the conditions of the matrix, additional analysis or modeling may be necessary to design compliance with the standards. This will result in additional costs for those projects that cannot use the matrix. It is anticipated that 80% to 90% of projects will use the matrix approach.

Implementation of permanent runoff management standards, beyond those which are part of standard transportation design, will be a new fiscal impact to department projects subject to the runoff management requirements in the revised rule. These projects may require application of one or more practices such as buffers, swales, detention ponds, discharge controls, and infiltration. Other costs associated with protective measures related to projects near "outstanding and exceptional" (O&E) or 303(d) waters are also new. For cost purposes the department estimated approximately 24 projects per year would be impacted by proximity to one of these waters. For projects subject to the runoff management standards and/or that require protective measures near O&E or 303(d) waters, additional real estate may be required.

Application, installation and maintenance of erosion control and runoff management best management practices are estimated to cost the department an additional \$4 to \$5.9 million per year. Labor associated with additional design and/or construction efforts by the department is estimated between \$0.4 to \$0.6 million. The total annual increased impact of the revised TRANS 401 rule is estimated at between \$4.4 and \$6.5 million.

**Long-Range Fiscal Implications**

Prepared By:	Telephone No.	Agency
Dan Scudder	267-3615	Department of Transportation
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)

## Fiscal Estimate Worksheet — 2001 Session

Detailed Estimate of Annual Fiscal Effect

☒ Original      ☐ Updated  
☐ Corrected      ☐ Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number
	TRANS 401

Subject

Revised TRANS 401 rule

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations — Salaries and Fringes		\$ 600,000	\$ -
(FTE Position Changes)		( FTE )	( FTE )
State Operations — Other Costs		5,900,000	-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ -
<b>B. State Costs by Source of Funds</b>		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S		6,500,000	-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$	\$ -

### Net Annualized Fiscal Impact

State

Local

Net Change in Costs	\$ 6,500,000	\$
Net Change in Revenues	\$	\$

Prepared By:

Dan Scudder

Telephone No.

267-3615

Agency

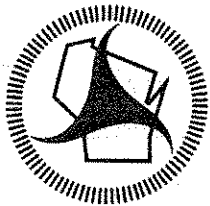
Department of Transportation

Authorized Signature

Telephone No.

Date (mm/dd/ccyy)





## Wisconsin Department of Transportation

www.dot.state.wi.us

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Governor

Thomas E. Carlsen, P.E.  
Acting Secretary

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June 4, 2002

Todd Stuart  
Governor's Office  
Room 125 South  
State Capitol  
Madison, WI 53702

Carole Schaeffer  
Budget Analyst  
Department of Administration  
10th Floor, 101 East Wilson  
Madison, WI 53702

RE: CHAPTER TRANS 401, relating to **construction site erosion control and storm water management procedures for department actions**


The Secretary of the Department of Administration has requested copies of proposed rules meeting certain criteria be sent to an agency's DOA budget analyst and to the Governor's office prior to submitting the rule for legislative committee review (December 9, 1987, memo on executive review of proposed administrative rules). I am hereby enclosing a copy of proposed ch. Trans 401.

The proposed rule making revises construction site erosion control and storm water management for transportation facility projects directed and supervised by the Department of Transportation, and creates new 'post-construction' performance standards for storm water management. This revised ch. Trans 401 is an integral part of a series of administrative rules and interdepartmental cooperation coordinated with DNR to strengthen Wisconsin's nonpoint source water pollution abatement programs and related water regulations.

The Department estimates that there will be a total annual increased fiscal impact on state liabilities of between \$4.4 and \$6.5 million. (Application, installation and maintenance of erosion control and runoff management best management practices are estimated to cost the Department an additional \$4 to \$5.9 million per year. Labor associated with additional design and/or construction efforts by the Department is estimated between \$0.4 to \$0.6 million.) The Department also estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands, nor will it have an adverse impact on small businesses. Further detail of the fiscal impact can be found on the fiscal estimated attached to the proposed rule.

Therefore, this proposed rule making appears to satisfy the criteria specified by the above-mentioned memo for executive review, prior to submittal to the presiding officers of the Senate and Assembly.

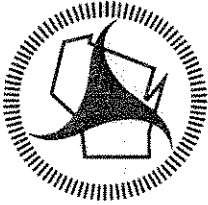
Sincerely,



Julie A. Johnson  
Paralegal/Administrative Rules Coordinator

Enclosures

cc: Senator Robson/Representative Grothman/Pat Goss/Mike Goetzman/  
Alice Morehouse/Paul Nilsen/Dan Scudder



## Wisconsin Department of Transportation

www.dot.state.wi.us

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The Honorable Fred Risser  
President, Wisconsin State Senate  
Room 220 South, State Capitol  
Madison, Wisconsin 53707

August 29, 2002

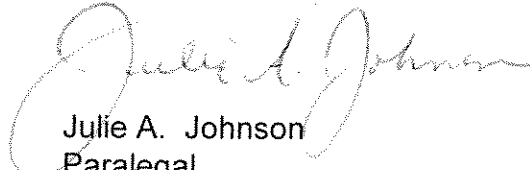
The Honorable Scott Jensen  
Speaker, Wisconsin State Assembly  
Room 315 North, State Capitol  
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 401**  
Notification of Legislative Standing Committees  
**CLEARINGHOUSE RULE 02-081**

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **02-081**, relating to **construction site erosion control and storm water management procedures for department actions**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,

  
Julie A. Johnson  
Paralegal

JAJ/dim

Enclosure

cc: Gary Poulson (Deputy Revisor of Statutes)/Senator Judy Robson/  
Representative Glenn Grothman//Dan Scudder

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**CR 02-081**

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The Wisconsin Department of Transportation proposes an order to repeal TRANS 401.02, 401.04(1)(note)5., (11) and (32), 401.06(intro.), 401.07(2)(f), (3)(b)1. and (c), 401.08(intro.), (1)(b), (2)(b)8., 401.10(intro.), (2)(intro.), (a) and (b); renumber TRANS 401.07(2)(j)5.; renumber and amend TRANS 401.04(26), 401.06(8), 401.07(intro.) and (1), 401.09(intro.) and (1), 401.10(2)(a)1. to 3., (3) and (4)(c); amend TRANS 401.01(1) and (2), 401.03(1)(intro.), (a) and (b), 401.03(2), 401.04(1), (1)(note)(intro.), 1., 3. and 4., (3), (5), (8), (9), (15) to (19), (21), (23) to (25), (27), (31), (35) and (36), 401.05(1), (2)(intro.) and (5), 401.06(1) to (4), (6) and (7), 401.07(2)(intro.), (c), (i)(intro.), (i)5. to 8., (j)(intro.), (j)1. to 3. and 9., (3)(title), (a), (b)(intro.), (b)2. and 3., 401.08(1)(a), (c) to (h), (2)(a)1. to 4., (b)(intro.), (b)1. to 7., 11.(intro.), 11.e. and g., 12.(intro.), 12.a. to c. and 14., (3)(intro.), (a) and (b), 401.09(title), (2)(a) and (b), 401.10(1), (4)(intro.), (4)(b) and (d), (5) and (6), 401.11; repeal and recreate TRANS 401.04(7), (14) and (29), 401.06(5), 401.07(2)(g), 401.08(2)(b)9., and 401.10(2)(title); and create TRANS 401.03(1)(c) and (2)(c) to (e), 401.04(7m), (13m), (15m), (25m), (26), (35d), (35g) and (35m), 401.06(8)(b), 401.07(1m) and (3)(b)4., 401.08(1)(am), (ar) and (3)(c), 401.10(4)(ag) and (am), (c)1., 3. and 4., (4m), 401.105(1m), 401.106, 401.107 and 401.12, relating to construction site erosion control and storm water management procedures for department actions

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**REPORT OF THE DEPARTMENT OF TRANSPORTATION  
ON THE FINAL RULE DRAFT**

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This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

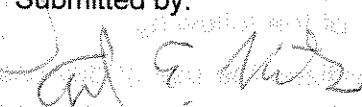
Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:

  
**PAUL E. NILSEN**  
Assistant General Counsel  
Office of General Counsel  
Department of Transportation  
Room 115-B, Hill Farms State  
Transportation Building  
P. O. Box 7910  
Madison, WI 53707-7910  
(608) 261-0126

## **PART 1**

### **Analysis Prepared by the Wisconsin Department of Transportation**

**STATUTORY AUTHORITY:** ss. 30.12(4), 84.01(2) and (5), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.32, 114.31(7) and 227.11(2), Stats.

**STATUTES INTERPRETED:** ss. 30.12(4), 84.01(2) and (5), 84.013(1), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.095(1)(b), 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.31(1)(b), 86.32, 114.31(7), 227.11(2) and 283.01(20), Stats.

**General Summary of Proposed Rule.** Currently, statutes require the Department of Transportation ("DOT") to establish standards for the control of soil erosion related to highway and bridge construction that is paid with state or federal funds. The statutes also exempt transportation facility projects directed and supervised by DOT (including highway, airport, harbor, and railroad projects) from numerous environmental prohibitions, and from permit or approval requirements administered by the department of natural resources ("DNR"), if DOT coordinates the exempted project with DNR through interdepartmental cooperation.

This revised chapter Trans 401 is an integral part of a series of administrative rules and interdepartmental cooperation coordinated with DNR to strengthen Wisconsin's nonpoint source water pollution abatement programs and related water regulations. The changes to Trans 401 are intended to protect the environment from nonpoint source water pollution originating from transportation facility construction and operation at least as effectively as the nonpoint source water pollution abatement programs and related water regulations proposed by DNR (principally proposed NR 151). This coordination of rules is intended to provide equal protection to the environment by prescribing similar practices for transportation projects undertaken by the state under regulation of this Trans 401 and for transportation projects undertaken by local units of government under regulation of proposed NR 151.

This rule revises construction site erosion control and storm water management for transportation facility projects directed and supervised by DOT. The rule also creates new 'post-construction' performance standards for storm water management. More specifically, the rule (which applies only to projects directed and supervised by DOT) does all of the following:

1. Standardizes the use of devices and practices to control erosion and stormwater runoff ("best management practices" or "BMPs"). The rule accepts BMPs as tested and proven effective when applied to specified site conditions. The standards are the same as those required under proposed NR151, and may be amended only jointly with DNR. Exceptions to the standards require site-specific justification.
2. Maintains the existing scheme of erosion control plans and erosion control implementation plans. DOT prepares an erosion control plan for the project site as part of a project's design. The prime contractor supplements that plan with an erosion control implementation plan ("ECIP"), which reflects borrow sites,

material disposal sites and construction methods chosen by the prime contractor. DOT reviews and approves the prime contractor's ECIP in consultation with DNR. The prime contractor implements the ECIP during construction, and DOT routinely inspects the project sites to verify the BMPs' effectiveness at protecting the environment. The prime contractor must take corrective action ordered by DOT and must amend an ECIP if the BMPs are ineffective.

3. Standardizes site inspections, site inspection reporting, and corrective action orders. The rule makes the site inspection process integral to preventing environmental harm by predicated liability for discharges of pollution upon the site inspections and corrective action orders. The rule formalizes communications between DOT and the prime contractor, and resolves minor inconsistencies between DOT's standard contract specifications and Trans 401. The rule details the process of ordering corrective action found during site inspections to be necessary, and the process of responding to such orders.
4. Clarifies liability for environmental harm caused by discharges of pollution from transportation facility projects. The rule specifies that the prime contractor is liable only if the prime contractor has failed to perform as required in the contract documents and if the failure was a substantial contributing factor in causing, failing to prevent, or worsening the discharge. Whenever the prime contractor has fully performed as required, or where any failure to perform was not a substantial contributing factor, DOT will pay as a project expense all costs associated with the discharge.
5. Creates post-construction standards for stormwater management similar to those in proposed NR 151. These post-construction provisions include requirements to do all of the following: avoid building transportation facilities near surface waters and to provide vegetated buffer areas where such building is unavoidable; reduce peak stormwater discharge rates from transportation facilities, and the total suspended solids carried in such runoff; encourage infiltration of runoff from transportation facilities into groundwater; reduce the amount of petroleum carried within runoff from fueling and vehicle maintenance areas; and encourage the use of vegetated swales (a low tract of land adjacent to a transportation facility) for the conveyance runoff and the removal of pollutants from runoff.
6. Establishes deadlines and standards for reducing the total suspended solids in runoff from transportation facilities located in developed urban areas. The rule requires DOT to educate DOT staff and other maintenance officials regarding nutrient, pesticide, salt and other deicing material and vehicle maintenance management activities in order to prevent runoff pollution of waters of the state.
7. Addresses utility facility projects undertaken within transportation rights-of-way. The rule harmonizes Trans 401 with DOT's utility accommodation policy and with the DOT-DNR interdepartmental liaison agreement.

**Fiscal Effect.** The Department estimates that there will be an annual fiscal impact on state liabilities of between \$4.4 and \$6.5 million. The Department estimates

that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. See the attached Fiscal Estimate and Fiscal Estimate Worksheet for a more detailed summary.

**Copies of Proposed Rule.** Copies of the rule may be obtained upon request, without cost, by writing to Dan Scudder, Department of Transportation, Bureau of Environment, Room 451, P. O. Box 7965, Madison, WI 53707-7965, or by calling (608) 267-3615. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the proposed rule will be provided to individuals at their request.

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### **TEXT OF PROPOSED RULE**

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 30.12(4), 84.01(2) and (5), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.32, 114.31(7) and 227.11(2), Stats., the department of transportation hereby proposes to amend a rule interpreting ss. 30.12(4), 84.01(2) and (5), 84.013(1), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.095(1)(b), 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.31(1)(b), 86.32, 114.31(7), 227.11(2) and 283.01(20), Stats., relating to construction site erosion control and storm water management procedures for department actions.

#### **SECTION 1.** Trans 401.01(1) and (2) are amended to read:

Trans 401.01(1) This chapter is promulgated under the authority of ss. 30.12(4), 84.01(2) and (5), 84.03(9)(a) and (10), 84.06(1) and (2)(b), 85.02, 85.075, 85.16(1), 85.19(1), 86.07(2), 86.25(2), 86.32, 114.31(7) and 227.11(2), Stats.

(2) As specified in s. 30.12(4)(a) and (b), Stats., activities affecting waters of the state ~~as defined in s. 144.01, Stats.,~~ that are carried out under the direction and supervision of the department in connection with highway and bridge or other transportation project design, location, construction, reconstruction, maintenance and

repair are not subject to the prohibitions or permit or approval requirements specified under ss. ~~29.29, 30.11, 30.12, 30.123, 30.195, 30.20, 59.971, 61.351, 62.231, 87.30 or ch. 144 or 147, Stats., unless 29.601, 30.11, 30.123, 30.19, 30.195, 30.20, 59.692, 61.351, 62.231 or 87.30 or chs. 281 to 285 or 289 to 299, except s. 281.48,~~ if the activity is not accomplished in accordance with interdepartmental liaison procedures established by the department of natural resources and the department of transportation for the purpose of minimizing the adverse environmental impact, if any, of the activity.

**SECTION 2.** Trans 401.02 is repealed.

**SECTION 3.** Trans 401.03(1)(intro.), (a) and (b) are amended to read:

Trans 401.03(1)(intro.) This chapter shall apply ~~applies~~ to the following actions:

(a) Any action ~~administered~~ directed and supervised by the department that relates to an airport, railroad, highway or bridge or other transportation facility construction or maintenance project for which plans are developed and ~~which that~~ may cause a discharge to waters of the state, including selected sites.

(b) Any action by a person ~~which requires a permit from or the approval of the department and which~~ that relates to a utility facility project and that may cause a discharge to waters of the state. This chapter applies only to actions within the area described in a permit issued by the department of transportation. Actions outside the area of a permit issued by the department of transportation are subject to regulation by the department of natural resources.



**SECTION 4.** Trans 401.03(1)(c) is created to read:

Trans 401.03(1)(c) Construction or reconstruction of a highway designated under s. 86.32, Stats., as a connecting highway, or any improvement, as defined in s. 86.31(1)(b), Stats., of a connecting highway.

**SECTION 5.** Trans 401.03(2) is amended to read:

Trans 401.03(2)(intro.) ~~With the exception of the use of erosion control and storm water management measures as required under s. Trans 401.06(1)~~ Notwithstanding sub. (1), this chapter does not apply to an any of the following:

(a) An action administered directed and supervised by the department that is considered routine maintenance or that addresses an emergency, nor does it apply to an. Routine maintenance activities shall employ best management practices described in s. Trans 401.06(1), but no other provisions of this chapter apply to routine maintenance.

(b) An action not administered directed and supervised by the department that involves the installation of a driveway by a person for residential use or agricultural use, as defined in s. 91.01(1), Stats.

**SECTION 6.** Trans 401.03(2)(c) and (3) are created to read:

Trans 401.03(2)(c) An action taken under a bid first advertised before the effective date of this chapter...[revisor inserts date] or, for projects for which no bid is advertised, taken under a contract signed before the effective date of this chapter...[revisor inserts date].

(3) Notwithstanding sub. (1), post-construction performance standards under s. Trans 401.106 do not apply to any of the following:

(a) An action for which a final environmental impact statement is approved before the effective date of this chapter ... [revisor inserts date].

(b) An action for which a finding of no significant impact is made under ch. Trans 400 before the effective date of this chapter ... [revisor inserts date].

(c) An action that is documented in an environmental report, as defined in s. Trans 400.04(10), completed before the effective date of this chapter ... [revisor inserts date] that fit the criteria or conditions for approval as a categorical exclusion in 23 CFR 771.117, April 1, 2000, or has met the review criteria of paragraph 23.a. of chapter 3 of federal aviation administration order 5050.4A issued on October 8, 1985.

(d) A project site that has undergone final stabilization within 2 years after the effective date of this chapter ... [revisor inserts date].

(e) Reconditioning or resurfacing, as defined in s. 84.013(1)(b) and (d), Stats., of a highway.

(f) Minor reconstruction of a highway. In this paragraph, "minor reconstruction" means reconstruction, as defined in s. 84.013(1)(c), Stats., of any length of highway that does not widen the roadbed by more than 100 feet, and for which the total length of relocated highway and any added through travel lane does not exceed 1.50 miles. Two or more adjoining added through travel lanes shall be counted as one added through travel lane for purposes of determining the length of the added through travel lanes. A relocation of a highway that includes added through travel lanes shall be counted as one unit for purposes of determining the length of the relocation and added through travel lanes. Pavement widening for purposes of adding a passing lane is not an added through travel lane. Notwithstanding the exemption under this paragraph, if minor

reconstruction causes a highway to lie within a buffer area, as defined in s. Trans 401.106(6)(a), or increases the area of the roadway that lies within a buffer area, the requirements under s. Trans 401.106(6) apply to that buffer area.

(g) Construction of a transportation facility that replaces an existing transportation facility, or other existing residential, commercial, industrial or institutional land uses, if there is no increase in exposed parking lots or roads.

(h) A transportation facility with less than 10% connected imperviousness based on complete development of the transportation facility, provided the cumulative area of all parking lots and rooftops is less than one acre.

**NOTE: Projects that consist of only the construction of bicycle paths or pedestrian trails generally meet this exception as these facilities have minimal connected imperviousness.**

(i) Construction of a transportation facility that has less than one acre of land disturbing construction activity.

**NOTE: Actions administered directed and supervised by the department which that are regulated by and comply with this chapter and that are subject to the department's interdepartmental liaison cooperative agreement with the department of natural resources are deemed considered to be in compliance with s. 147.021 283.33, Stats., and the requirements of ch. NR 216.**

**SECTION 7.** Trans 401.04(1), (1)(note)(intro.), 1., 3. and 4. are amended to read:

Trans 401.04(1) "Best management practices" or "BMPs" means structural or nonstructural measures which are temporary or permanent measures, methods, procedures and, practices, techniques or devices employed to avoid or minimize soil, sediment and pollutant movement, or to manage storm water runoff, onto or off a site, developed in consultation with the department of natural resources.

**NOTE: Best management practices that are applicable under this chapter are identified in the The Wisconsin Department of Transportation specifications and manuals listed below identify best management practices that apply under this**

~~chapter. However, they are not all inclusive and others best management practices other than those listed may be applicable to any given situation.~~

1. Sections 107.18, 107.19, 107.20 and, 628 and 631 of the Standard Specifications for Road and Bridge Construction of the Wisconsin Department of Transportation. Copies of these sections may be obtained from the Wisconsin Department of Transportation, Office of Construction, P. O. Box 7916, Madison, Wisconsin 53707-7916.

3. Chapter Chapters 10 and 13 of the Facilities Development Manual of the Wisconsin Department of Transportation, Division of Highways Transportation Infrastructure Development. A copy of this chapter Copies of these chapters may be obtained from the Wisconsin Department of Transportation, Office of Design Division of Transportation Infrastructure Development, P. O. Box 7916 7965, Madison, Wisconsin 53707-7916 53707-7965.

4. Chapters 2 and 10 of the Highways Construction and Materials Manual of the Wisconsin Department of Transportation, Division of Highways Transportation Infrastructure Development. Copies of these chapters may be obtained from the Wisconsin Department of Transportation, Office of Construction Division of Transportation Infrastructure Development, P. O. Box 7916 7965, Madison, Wisconsin 53707-7916 53707-7965.

SECTION 8. Trans 401.04(1)(note)5. is repealed.

SECTION 9. Trans 401.04(3) and (5) are amended to read:

Trans 401.04(3) "Construction" or "maintenance" means, but is not limited to, includes clearing and grubbing, demolition, excavating, pit trench de-watering, filling or grading.

(5) "Corrective action" means ~~the changes necessary, in conformance with best management practices, to existing practices or structures because of the failure of those practices or structures to avoid or minimize a discharge, and action that is taken in response to a discharge, or to the threat of a discharge, to minimize or prevent the discharge.~~ "Corrective action" may include preventative maintenance of existing best management practices, or the implementation of, new or different erosion control and storm water management measures best management practices.

SECTION 10. Trans 401.04(7) is repealed and recreated to read:

Trans 401.04(7) "Design storm" means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.

**SECTION 11.** Trans 401.04(7m) is created to read:

Trans 401.04(7m) "Directed and supervised by the department" means any of the following:

(a) An activity undertaken under a bid let by the department, unless the department let the bid at the request of a city, village, town or county to assist with a transportation facility that is or will be under the jurisdiction of that city, village, town or county, and the bid specifies either that this chapter does not apply or that the activity is subject to regulation by the department of natural resources.

(b) An activity undertaken under a contract to which the department is a party, unless the contract specifies that this chapter does not apply and the department did not let the bid for that activity.

(c) An activity undertaken using funds awarded by the department under a grant agreement that specifies that the department is administering the project or that this chapter applies.

(d) The construction or maintenance of any highway or portion of a highway located on a federal-aid system, unless no state or federal funds are used, or unless all state and federal funds used are awarded under a grant agreement that does not specify that the department is directing and supervising, or administering, the project.

**NOTE:** The Department of Transportation sometimes engages in the activities described in this subsection to assist local units of government on local transportation facility construction projects. Providing such assistance, without more, does not mean the Department directs and supervises that local project, and the project does not become subject to this chapter because of that assistance. Activities not directed and supervised by the Department are subject to erosion control and stormwater management regulation by the Department of Natural Resources.

**SECTION 12.** Trans 401.04(8) and (9) are amended to read:

Trans 401.04(8) "Discharge" means the release movement of pollutants or sediments from a project site or selected site as a result of erosion or storm-water runoff.

(9) "Disturbed area" means an area on a project site or selected site where ~~construction or maintenance activity has or will take place resulting in the displacement of stable soils~~ land disturbing activity has occurred.

**SECTION 13.** Trans 401.04(11) is repealed.

**SECTION 14.** Trans 401.04(13m) is created to read:

Trans 401.04(13m) "Highway" has the meaning given in s. 340.01(22), Stats.

**SECTION 15.** Trans 401.04(14) is repealed and recreated to read:

Trans 401.04(14) "Infiltration system" means a device or practice that is designed specifically to encourage the entry and movement of surface water into or through underlying soil. "Infiltration system" does not include natural entry and movement of surface water into or through underlying soil in pervious areas such as lawns. "Infiltration system" does not include minimal entry and movement of surface water into or through underlying soil from practices such as swales or roadside channels that are designed for conveyance and pollutant removal only.

**SECTION 16.** Trans 401.04(15) is amended to read:

Trans 401.04(15) "Inspector" means an employee employee or authorized representative of the department assigned to make inspections of work or materials.

**SECTION 17.** Trans 401.04(15m) is created to read:

Trans 401.04(15m) "Land disturbing activity" means any manmade alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in increased runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. "Land disturbing activity" includes clearing and grubbing, demolition, excavating, pit trench dewatering, and filling and grading activities, but does not include routine maintenance. "Land disturbing activity" does not include activities, such as tree trimming or brush removal, that involve only the cutting or removing of vegetation above the ground by a utility person.

**SECTION 18.** Trans 401.04(16) to (19), (21) and (23) to (25) are amended to read:

Trans 401.04(16) "Material disposal site" means an area that is outside of a project site which, is used for the lawful disposal of surplus materials or materials unsuitable for use within the project site, and is under the direct control of the contractor. "Material disposal site" does not include a private landfill that is not managed by the contractor or a municipally owned landfill.

(17) ~~"Permanent erosion control and storm water management measures~~ best management practices" means those best management practices ~~employed prior to, during and that are intended to remain in place after completion of construction or maintenance activity~~ final stabilization.

(18) "Person" means an individual, institution, business, corporation, limited liability company, partnership, association, joint venture, governmental subdivision or agency, or any other legal entity, except the term does not include the department, or its officers or ~~employees~~ employees acting in their official capacities.

(19) "Pollutant" has the meaning ~~specified~~ given in s. ~~147.015(13)~~ 283.01(13), Stats.

(21) "Prime contractor" means a person authorized or awarded a contract to perform, ~~either directly or through the use of~~ using subcontractors, all the work of a project ~~administered~~ directed and supervised by the department.

(23) "Project diary" means a diary of a project's activities kept by a project engineer or inspector, including all inspection report forms and any erosion control inspection forms completed under s. Trans 401.10(4).

(24) "Project engineer" means an ~~employe~~ employee or authorized representative of the department who is in charge of the engineering details and the field administration of a project.

(25) "Project site" means the site area of a project on which land disturbing activity occurs, excluding borrow sites and material disposal sites.

**SECTION 19.** Trans 401.04(25m) is created to read:

Trans 401.04(25m) "Routine maintenance" means an activity that involves less than 5 acres of land disturbance and that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of an existing transportation facility.

**SECTION 20.** Trans 401.04(26) is renumbered Trans 401.04(35r) and amended to read:



Trans 401.04(35r) "Responsible Utility person" means the person having not employed by the department that has control over a utility facility project that is ~~not~~ administered by the department.

**SECTION 21.** Trans 401.04(26) is created to read:

Trans 401.04(26) "Runoff" means storm water or precipitation, including rain, snow or ice melt, that moves on land surface via sheet or channeled flow.

**SECTION 22.** Trans 401.04(27) is amended to read:

Trans 401.04(27) "Runoff coefficient" means the fraction of total precipitation that will leave a project site or selected site as storm water runoff based on land use, soil and drainage characteristics.

**SECTION 23.** Trans 401.04(29) is repealed and recreated to read:

Trans 401.04(29) "Sediment" means settleable solid material that is transported by runoff, suspended within runoff or deposited by runoff away from its original location.

**SECTION 24.** Trans 401.04(31) is amended to read:

Trans 401.04(31) "Selected sites site" means any borrow site or material disposal site used exclusively for projects administered directed and supervised by the department. A site shall be considered to be used exclusively for department projects even if material excavated from the site are sold directly to consumers as incidental sales.

**SECTION 25.** Trans 401.04(32) is repealed.

**SECTION 26.** Trans 401.04(35) is amended to read:

Trans 401.04(35) "~~Temporary erosion control and storm water management~~ measures best management practices" means those best management practices

employed during construction or maintenance activity that are not intended to remain in place after final stabilization.

**SECTION 27.** Trans 401.04(35d), (35g) and (35m) are created to read:

Trans 401.04(35d) "Time of concentration" means the time it takes for flow to reach the drainage basin outlet from the hydraulically most remote point in the drainage basin.

(35g) "Transportation facility" means a highway, a railroad, a public mass transit facility, a public-use airport, a public trail or any other public work for transportation purposes such as harbor improvements, as defined in s. 85.095(1)(b), Stats.

(35m) "Utility facility project" means the portion of an activity that cannot proceed without a permit issued by the department, and that relates to a pipe, pipeline, duct, wire line, conduit, pole, tower, or other fixed equipment or structure used for the transmission, conveyance or distribution of communications, electric power, light, heat, fuel, gas, oil, petroleum products, water, steam, fluids, sewerage, drainage, irrigation or similar facilities. A utility facility project is considered minor if all excavated soils will be replaced the same day as the excavation or immediately the next day and for which the cumulative disturbed area is less than one acre. "Utility facility project" does not include maintenance activities for which the department requires no additional permit.

**SECTION 28.** Trans 401.04(36) is amended to read:

Trans 401.04(36) "Waters of the state" has the meaning specified given in s. 144.01(19) 283.01(20), Stats.

**SECTION 29.** Trans 401.05(1), (2)(intro.) and (5) are amended to read:

Trans 401.05(1) Investigate the intended project site and design the project to avoid or minimize adverse effects which that may be caused by erosion or a discharge to waters of the state.

(2) Design ~~erosion control and storm water management measures~~ or select best management practices for the project to:

(5) Establish a thorough preventative maintenance program which that can be reasonably be implemented as appropriate within the context of the standard specifications for the type of project being developed or through the use of special contract provisions.

**SECTION 30.** Trans 401.06(intro.) is repealed.

**SECTION 31.** Trans 401.06(1) to (4) are amended to read:

Trans 401.06(1) GENERAL. ~~Erosion control and storm water management measures~~ Best management practices shall be employed to avoid or minimize soil, sediment and pollutant movement, or to manage storm water runoff, onto or off a project site or selected site, including the avoidance or minimization of discharges to off-site areas, public sewer inlets and waters of the state. ~~Where an erosion control and storm water management measure fails to adequately perform as intended, other such measures may be employed by a prime contractor or responsible person with the written approval or at the direction of the project engineer or inspector.~~

(2)(title) ~~REMOVAL OF TEMPORARY EROSION CONTROL AND STORM WATER MANAGEMENT MEASURES~~ BEST MANAGEMENT PRACTICES. ~~At the direction of the project engineer or inspector, or as required by the project's erosion control plan or erosion control implementation plan, a~~ A prime contractor or responsible

utility person, as appropriate, shall remove or cause the removal of all temporary erosion control and storm water management measures best management practices at a site when permanent erosion control and storm water management measures best management practices have been installed to the satisfaction of the project engineer or inspector or when the project engineer or inspector determines that temporary erosion control and storm water management measures best management practices are no longer required for the purpose intended as determined by the project engineer or inspector and orders their removal. The department shall remove or cause to be removed all temporary best management practices at a project site or selected site when permanent best management practices have been installed, if the department has accepted the project as final before the temporary best management practices are removed.

(3) TRACKING. Soils tracked by construction or maintenance equipment from a project site or selected site onto a public or private paved roadway or sidewalk shall be minimized to the maximum extent practicable. To this end, a temporary roadway consisting of at least gravel or a hard surface may be constructed if deemed necessary and appropriate by the project engineer or inspector. Soils The contractor or utility person shall clean or remove soils tracked onto a public or private paved roadway or sidewalk shall be cleaned or otherwise removed by the contractor or responsible person, as appropriate, in a manner consistent with this chapter within the period specified by the project engineer or, if no period is specified, within 24 hours after the occurrence, or as directed by the project engineer or inspector after such tracking to prevent sedimentation of the tracked soils into waters of the state.

(4) **SEDIMENT CLEANUP AND REMOVAL.** ~~Off-site~~ The contractor shall clean up or remove sediment deposition occurring discharged as a result of a discharge due to a storm event shall be cleaned up or otherwise removed by the contractor or responsible person in a manner consistent with this chapter and in a timely fashion as conditions allow at the direction of the project engineer or inspector. All The utility person shall clean up or remove sediment discharged because of a storm event in a manner consistent with this chapter and in a timely fashion as conditions allow at the direction of the department's authorized representative. The contractor or utility person shall clean up or remove other off-site sediment deposition occurring as a result of discharged by construction or maintenance activity shall be cleaned up or otherwise removed by the contractor or responsible person at the end of each work day. Costs incurred under this subsection because of a storm event shall be borne as provided in s. Trans 401.12.

**SECTION 32.** Trans 401.06(5) is repealed and recreated to read:

Trans 401.06(5) **PUBLIC SEWER INLET PROTECTION.** The contractor or utility person, in accordance with best management practices, shall protect downslope, off-site public sewer inlets reasonably subject to a discharge and downslope, on-site public sewer inlets.

**SECTION 33.** Trans 401.06(6) and (7) are amended to read:

Trans 401.06(6) **BUILDING MATERIAL AND OTHER WASTE DISPOSAL.** All The contractor or utility person shall properly manage and dispose of building materials and other wastes shall be properly managed and disposed of by the contractor or responsible person, as appropriate, to prevent pollutants and debris from being carried

off a site by wind or water runoff. No person shall may permit the discharge of any solid materials, including building materials, to be discharged in violation of chs. 30 and 31, Stats., or section 404 permit requirements. All The contractor or utility person shall dispose of building material and other solid wastes, including surplus materials from a project and materials not suitable for use on a project, shall be disposed of by the contractor or responsible person in accordance with all applicable federal, state and local laws, regulations, rules and ordinances relating to the disposal of solid wastes.

**NOTE:** For Contact the local fire department for directions on proper disposal of flammable, combustible, toxic materials and other hazardous substances, contact the local fire department.

(7) GROUNDWATER LIMITATIONS. When permanent infiltration systems are used, the department shall conduct appropriate on-site testing shall be conducted to determine if the seasonal high water groundwater elevation or top of bedrock is within 5 feet of the bottom of the proposed practice infiltration system. If permanent infiltration structures systems are to be used and there is a municipal well serving a community water system within 400 ~~400~~ feet or a non-public well serving a non-community or private water system within 400 ~~100~~ feet, the groundwater flow must be identified in accordance with the provisions specified in either ch. NR 110 or 214.

**SECTION 34.** Trans 401.06(8) is renumbered Trans 401.06(8)(a) and amended to read:

Trans 401.06(8)(title) PROHIBITED DISCHARGES DISCHARGE VELOCITY;  
SITE DEWATERING. (a) Velocity The contractor or utility person shall place  
velocity dissipation devices shall be placed at discharge locations and along the length  
of any outfall channel as necessary to provide a non-erosive flow from a structure to a

water course so that maintains and protects the natural physical and biological characteristics and functions are maintained and protected of the water course.

**SECTION 35.** Trans 401.06(8)(b) is created to read:

Trans 401.06(8)(b)1. In this paragraph, "karst feature" means an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps or swallets.

2. No contractor or utility person may knowingly direct site dewatering effluent into surface waters of the state or to a karst feature, unless the sediment in the effluent has been reduced to the maximum extent practicable and the discharge does not create an erosion problem downstream prior to entering a surface water of the state or a karst feature, or unless the department of natural resources has approved the action.

**NOTE:** This paragraph does not require the removal of sediment from dewatering effluent unless the effluent is going to surface waters or a karst feature. The preferred method of disposing of dewatering effluent without removing sediment is to direct the effluent to a pervious area, where water may infiltrate into the ground, instead of directing it into a surface water. Another method to dispose of effluent without removing sediment is to discharge the effluent to a sanitary sewer system. This method may be viable in urban areas where a sanitary sewer system is available, if the sewer authority allows such a discharge.

**SECTION 36.** Trans 401.07(intro.) is renumbered Trans 401.07(1g) and amended to read:

**Trans 401.07 Erosion control plan. (1g)(title) GENERAL RESPONSIBILITY.**

(a) ~~In the case of a project administered by the department, the~~ The department shall prepare the erosion control plan for a project site and, ~~in the case of a project not administered directed and supervised by the department, a responsible.~~

(b) A utility person shall prepare the erosion control plan for the any utility facility project that is not considered a minor utility facility project, unless the department elects